

6388-0518US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Veronique ROULIER, et al. : EXAMINER: BERMAN

SERIAL NO.: 09/555,523 :

FILED: SEPTEMBER 15, 2000 : GROUP ART UNIT: 1619

FOR: STABLE OIL-IN-WATER EMULSION, PROCESS FOR MANUFACTURING IT  
AND IT USE IN COSMETICS AND DERMATOLOGY

DECLARATION UNDER 37 C.F.R. 1.132

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

SIR:

I, Eric QUEMIN, hereby declare:

1. I am an inventor named on the above-identified application, and am employed by L'ORÉAL as an engineer and have experience in the field of emulsions, particularly oil-in-water (O/W) emulsions, and their use in cosmetic and/or dermatological compositions.
2. I understand the English language.
3. I am familiar with the disclosure in JP 09-255529 ("JP '529").
4. The following experiments were carried out by me or under my direct supervision and control.
5. The emulsion in example 4 of JP '529 was prepared. Example 4 of JP '529 was chosen because, like example 1 of the present application, this emulsion contained 20% by weight cyclomethicone.

6. The emulsions in both example 4 of JP '529 and example 1 of the present application were analyzed to determine whether the oil globules therein were monodispersed. That is, both emulsions were analyzed to determine whether the oil globules therein all had virtually the same size. The emulsion in example 1 of the present specification was analyzed in 1997. The emulsion in example 4 of JP '529 was analyzed in 2002.

7. To determine whether the oil globules were monodispersed, a Mastersizer (MALVERN) was used to determine the ratio of the average particle size in number ( $M_n = D[3,2]$ ) to the average particle size in volume ( $M_v = D[4,3]$ ). Where this ratio is greater than or equal to 0.65, the oil globules are monodispersed. Where this ratio is less than 0.65, the oil globules are not monodispersed (that is, the distribution of particle size is not uniform).

Chapters 3 and 4 of the operators guide for the Mastersizer are attached hereto as Exhibit A.

8. As shown in Exhibit B, it was determined (using the Mastersizer) that for example 4 of JP '529,  $M_n = 1.482$  and  $M_v = 2.418$ , yielding a  $M_n : M_v$  ratio of 0.61. Thus, the oil globules in example 4 of JP '529 are not monodispersed. In contrast, example 1 of the present application yielded a  $M_n : M_v$  ratio of 0.71 ( $M_n = 6.86$ ;  $M_v = 9.64$ ), indicating that the oil globules were monodispersed.

9. Based upon the disclosure in JP '529, particularly the disclosure concerning how the emulsions disclosed therein are prepared, as well as the results discussed above relating to example 4 of JP '529, I would expect that no JP '529 emulsion has oil globules which are monodispersed.

10. Furthermore, reproducing example 4 of JP '529 yielded a solid composition. This solid composition is not a stick, but rather is solidified in the container and is difficult to remove with a finger. Such compositions do not have a pleasant feel when applied directly to skin. In contrast, the emulsions of the present invention are creamier and, thus, easy to

remove from a container with a finger. Also, the emulsions of the present invention have a pleasant feel when applied to skin, making such emulsions much more desirable to consumers and, thus, a significant advance over JP '529's emulsions.

11. The undersigned petitioner declares further that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

12. Further deponent sayeth not.

Name eric quemin

Signature 

Date 25/3/2002